

REMARKS

In the Office Action of 17 February 2009, the Examiner rejected claims 1-6, 9 and 14 under 35 U.S.C. § 102(b), as anticipated by U.S. Patent No. 5,496,365 to Sgro (hereinafter "Sgro"). Claims 7 and 8 were rejected under 35 U.S.C. § 103(a), as being unpatentable over Sgro in view of U.S. Pat. No. 6,254,632 to Wu et al. (hereinafter "Wu"). Also under 35 U.S.C. § 103(a), claims 10, 11, and 16 were rejected as being unpatentable over Sgro in view of U.S. Pat. No. 6,626,935 to Ainsworth et al. (hereinafter "Ainsworth"). Additionally, claims 12, 13 and 15 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Sgro in view of U.S. Pat. No. 5,922,020 to Klein et al. (hereinafter "Klein").

Claims 1, 5, 10 and 16 are amended herein. Claim 9 is cancelled without prejudice or disclaimer as to the subject matter contained therein. Support for the amendments to claim 1 may be found at paragraphs 0057-0060 of the application as filed and amended. The amendment to claim 5 eliminates subject matter now presented in claim 1 and the amendments of claims 10 and 16 correct the dependency of those claims in light of the cancellation of claim 9. No claims have been added.

INTERVIEW SUMMARY

A telephone interview was conducted on 16 April 2009 between the undersigned attorney and Examiner Jocelin Tanner and Supervisory Patent Examiner Anhtuan Nguyen. The undersigned wishes to thank the Examiner and SPE for the courtesies extended during that interview.

During the interview, the discussion focused on Sgro and the rejection of the claims as anticipated by or obvious, at least in part, over Sgro. No agreement was reached on the claims. While it was agreed that the embodiments exemplified in some of the figures (particularly, Figs. 9 and 10) were not shown in the prior art, it was also indicated that claims 1 and 2 were not considered to adequately describe the invention over the prior art. The Examiner also maintained that the elements of claim 1 that were not specifically addressed in the most recent Office Action were inherent in the cited prior art.

RESPONSE

The outstanding Office Action refers to Figure 3 of Sgro and identifies various structures in this stent which allegedly correspond to the spring strut, hinge strut, anchor region, and deflectable end recited in claim 1. However, when the elements of claim 1 specifying the arrangement and movement of these elements relative to each other are considered, it becomes clear that Sgro does not teach or suggest all of these elements as required to establish a prima facie case of anticipation. Because the deflection of the spring struts transversely to the expansion direction was not addressed in the Office Action, and it became apparent during the interview that this portion of the claim was not well understood, claim 1 has been amended to provide additional detail in this regard.

Claim 1 has been amended to recite the ability of the bearing structure to proceed from a compressed condition through a transitional condition to an expanded condition. Claim 1 also now recites that the spring struts rotate in a first direction when the bearing structure proceeds from the compressed condition to the transitional condition and then rotate in the opposite direction when going from the transitional condition to the expanded condition. Newly added

recitations of claim 1 also provide the arrangement of the various structures within the bearing structure relative to each other in the compressed and transitional conditions. The Applicant maintains that Sgro neither teaches nor suggests all these elements of claim 1.

Furthermore, Sgro does not provide a stent that is capable of expanding in the same manner as the stent recited in claim 1 because Sgro provides a device that expands in a simple accordion-style manner. For example, there is no indication that the component of Sgro identified as a “deflectable end” in the Office Action actually deflects at all.

Additional distinctions are also provided by other claims which depend from claim 1. For example, claim 2 provides an additional limitation that is not taught or suggested by Sgro. Specifically, claim 2 recites that a spring strut adjoins both ends of a hinge strut and that the two spring struts are so arranged as to exert a moment in the same direction on the hinge strut about the hinge axis. During the telephone interview of 16 April 2009, the meaning of the term “moment” was discussed. In mechanics, “moment” is defined as “(a) the tendency to cause rotation about a point or axis; (b) a measure of this tendency; (c) the product of a (specified) force, mass, volume etc. and its perpendicular distance from its axis, fulcrum or plane.” (Webster’s New Twentieth Century Dictionary of the English Language, Second Edition, Simon & Shuster, 1983). Such an exertion of force is not taught or suggested by Sgro. Further distinctions are also provided by other claims which depend from claim 1, such as claim 5, which recites that the hinge axis extends approximately radially.

Therefore, Sgro does not teach or suggest all the elements of claim 1, and claim 1 patentably distinguishes over Sgro. Likewise, claims 2-6, 9 and 14, which depend from and include all the limitations of claim 1, also patentably distinguish over Sgro. Withdrawal of the rejection of these claims under 35 U.S.C. § 102(b) is respectfully requested.

Claims 7 and 8 stand rejected under 35 U.S.C. § 103(a), as being unpatentable over Sgro in view of Wu. Wu is relied upon for the teaching of the use of a magnesium alloy or a bioresorbable material. However, as with Sgro, discussed above, Wu also provides no teaching or suggestion of the movement of the various components relative to each other, particularly the rotation of spring struts when passing from the compressed condition to the transitional condition to the expanded condition. Therefore, neither Sgro nor Wu teach or suggest all of the limitations of claims 7 and 8, and claims 7 and 8 patentably distinguish over the Sgro in view of Wu. Withdrawal of this rejection under 35 U.S.C. § 103(a) is respectfully requested.

Claims 10, 11 and 16 stand rejected as being obvious over Sgro in view of Ainsworth. In the Office Action, Ainsworth was considered to provide hinge struts which are S shaped or W shaped in the compressed condition. Ainsworth's "springs 36" were considered to be a hinge strut. However, as discussed above in connection with Sgro and Wu, Ainsworth also provides no teaching or suggestion of the specified movement of the hinge struts and spring struts relative to each other, particularly the rotation of spring struts when passing from the compressed condition to the transitional condition to the expanded condition, as recited in the claims. Therefore, claims 10, 11, and 16 patentably distinguish over Sgro in view of Ainsworth. Withdrawal of the rejection of these claims under 35 U.S.C. § 103(a) is respectfully requested.

Claims 12, 13 and 15 have been rejected as being obvious over Sgro in view of Klein. . However, as discussed above in connection with Sgro, Wu and Ainsworth, Klein also provides no teaching or suggestion of the specified movement of the hinge struts and spring struts relative to each other, particularly the rotation of spring struts when passing from the compressed condition to the transitional condition to the expanded condition, as recited in the

claims. Therefore, claims 12, 13 and 15 patentably distinguish over Sgro in view of Klein.

Withdrawal of this rejection under 35 U.S.C. § 103(a) is respectfully requested.

Therefore, it is respectfully maintained that the claims patentably distinguish over all of the cited references. The issuance of a Notice of Allowance is earnestly solicited.

The outstanding Office action was mailed on 17 February 2009. The Examiner set a shortened statutory period for reply of 3 months from the mailing date. Therefore, a petition for an extension of time (one-month) is hereby made with this response. Additionally, the Applicants hereby make a conditional petition for any additional extension of time for response in the event that such a petition is required. The Commissioner is authorized to charge any fee or to credit any overpayment associated with the filing of this paper to Deposit Account 15-0450.

Respectfully submitted,

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